

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
REPLY BRIEF**

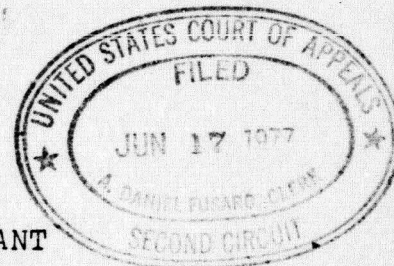




# 77-6061

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT



RAY MARSHALL, SECRETARY OF LABOR,  
UNITED STATES DEPARTMENT OF LABOR, APPELLANT

v.

THE CHASE MANHATTAN BANK (NATIONAL  
ASSOCIATION), APPELLEE

Appeal from the United States District Court  
for the Southern District of New York

REPLY BRIEF FOR THE SECRETARY OF LABOR

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In its brief urging affirmance of the district court's dismissal of the Secretary's complaint, appellee raises two new matters, not addressed in the abbreviated proceedings below, to which the Secretary here replies. In addition, a further submission concerning the propriety of the district court's possible abstention is presented in light of the Supreme Court's recent decision in Trainor v. Hernandez, \_\_\_ U.S. \_\_\_, 45 U.S.L.W. 4535 (May 31, 1977).



1. ERISA COVERS THE FEDERAL SWEETS PLAN

Chase contends at some length, although not apparently in direct support of any of its grounds for affirmance (Brief of Appellee pp. 2; 8-11: "STATEMENT OF THE CASE, Merits of the Secretary's Jurisdictional Contentions"), that the Pension Plan for Wage Employees of Federal Sweets and Biscuits Co. Inc. ("the plan") is not covered by ERISA because the plan sponsor - employer is defunct. The use of adjectives such as "inactive" to describe the plan blinks the reality that in 1975, as Chase's petition in the state court shows, nearly \$200,000 of plan assets were under management, and benefits were being paid, by a fiduciary. (E.g., Appendix 137). In any event, the district court, in deciding on the dismissal of the complaint, had before it the Secretary's allegation that "Chase is trustee of the assets of an employee benefit plan...", Complaint at para. 4. (Appendix 5).

2. THE ANTI-INJUNCTION STATUTE, 28 U.S.C. 2283, DOES NOT BAR THE INJUNCTION

Chase argues that the district court's dismissal of the complaint can be upheld because under the anti-injunction statute, 28 U.S.C. 2283, the complaint fails to state a claim upon which relief could be granted.



However, 28 U.S.C. 2283 does not apply where an injunction is sought by an officer or agency of the federal government. NLRB v. Nash-Finch Co., 404 U.S. 138 (1971); Leiter Minerals, Inc. v. United States, 352 U.S. 220 (1957). In Leiter, the Supreme Court (Frankfurter, J.) wrote:

"The statute is designed to prevent conflict between federal and state courts. This policy is much more compelling when it is the litigation of private parties which threatens to draw the two judicial systems into conflict than when it is the United States which seeks a stay to prevent threatened irreparable injury to a national interest. The frustration of superior federal interests that would ensue from precluding the Federal Government from obtaining a stay of state court proceedings except under the severe restrictions of 28 U.S.C. §2283 would be so great that we cannot reasonably impute such a purpose to Congress from the general language of 28 U.S.C. §2283 alone." Id., at 225-226.

The rule of Leiter is not limited to suits brought by the Attorney General. In Nash-Finch, the National Labor Relations Board (NLRB) filed suit in U.S. District Court to restrain enforcement of the state court injunction on the ground that the injunction regulated conduct governed exclusively by the National Labor Relations Act (NLRA). The Supreme Court held that the pre-emptive effect of the NLRA gave rise to an implied authority in the Board, in spite of §2283, to enjoin state action. The Court



found it inconsequential that the moving party was not the Attorney General but rather another federal agency.

"The purpose of §2283 was to avoid unseemly conflict between the state and the federal courts where the litigants were private persons, not to hamstring the Federal Government and its agencies in the use of federal courts to protect federal rights. We can no more conclude here than in Leiter that a general statute, limiting the power of federal courts to issue injunctions, had as its purpose the frustration of federal systems of regulation. See Brown v. Wright, 137 F.2d 484, 488. The frustration of superior federal interests by the general language of §2283 cannot reasonably be imputed." 404 U.S. at 146.

Chase contends that the anti-injunction statute is applicable here despite the implied exception found in Leiter and Nash-Finch for two reasons, neither of which is tenable.

First, Chase attempts to distinguish away those cases on the grounds that first, the cases giving effect to the implied exception involve state court action "in an area pre-empted by federal law" (Br. at 13), and, secondly, that the State court's adjudication "will not interfere with the Labor Department's enforcement of ERISA . . ." (Br. at 13). As to the first ground of purported distinction, while Chase does not dispute the broad pre-emptive effect of ERISA, it contends that it is "certainly



arguable" (p. 13) that ERISA does not apply to plans whose sponsors have been inactive since before 1975. To state the proposition is to reject it. The availability of a federal forum to vindicate "superior federal interests" cannot be made to turn on the "arguability" of the scope of the federal scheme. Chase's conclusory assertion that a state court jurisdictional determination will not hinder ERISA enforcement ignores or discounts the allegation of paragraph 11 of the complaint that such an adjudication "will complicate and burden the Secretary's enforcement and administration of ERISA" in specified ways, as well as causing other irreparable injury. The complaint alleges that the plan is covered by ERISA and that Chase's pursuit of the state court case will interfere with the federal enforcement scheme; the federal interest protected by the doctrine of Leiter and Nash-Finch extends to a federal adjudication of those questions if they be in dispute.

Chase asserts secondly that the implied exception to the anti-injunction statute does not exist unless state action in a preempted area has already taken place. If such completed prior state action were necessary, it



has occurred; one needs only look to the state proceedings, which are advanced. But under the rationale of Leiter and Nash-Finch, it is immaterial whether the state court action is accomplished or imminent.

The cases other than Nash-Finch which are cited by Chase do not, as Chase suggests, make the implied exception conditional upon prior state action. Capital Services, Inc. v. NLRB, 347 U.S. 501 (1954), is not relevant as it was decided under one of the express exceptions in 28 U.S.C. 2283 and before Leiter. United States v. City of New Haven, 367 F. Supp. 1338 (D. Conn. 1973), relies on Nash-Finch and Leiter, and sets forth the following from the Supreme Court's review of 28 U.S.C. 2283 in Mitchum v. Foster, 407 U.S. 225 (1972):

"[s]till a third exception, more recently developed, permits a federal injunction of state court proceedings when the plaintiff in the federal forum is the United States, itself or a federal agency asserting 'superior federal interest.'" (citations omitted) 367 F. Supp. at 1341, n. 6. (Emphasis added).

In Federal Power Commission v. Corporation Commission of the State of Oklahoma, 362 F. Supp. 522 (W.D. Okl. 1973), no mention is made of 28 U.S.C. 2283. No injunction to stay state court proceedings was sought. The federal agency was seeking a federal court injunction against enforcement of state administrative orders. It was held



that the orders constituted an undue burden on interstate commerce and were pre-empted as within the jurisdiction of the Federal Power Commission under the Natural Gas Act. Indeed, the state administrative orders were the subject of an appeal pending in the Oklahoma Supreme Court, and the federal court expressly declined to abstain inasmuch as no state law questions were involved in the federal case.

From the foregoing it is clear that the anti-injunction statute, 28 U.S.C. 2283, does not limit a federal court's power to grant the relief sought by the Secretary in this case and accordingly, does not constitute a proper basis for a decision that the complaint failed to state a claim upon which relief could be granted.



### 3. ABSTENTION IS NOT PROPER HERE

Appellant's principal brief addresses the question whether the district court's dismissal could be upheld as an exercise of the power of abstention, an appropriate course in some exceptional circumstances. We pointed out that in the present case none of the three conditions which were identified by the Supreme Court as warranting abstention in Colorado Water Conservation District v. United States, 424 U.S. 800 (1976), prevailed.

Chase counters that abstention is proper in this case because the Secretary had an opportunity to present his federal claims in the state court. However, the Secretary was not and is not a party in the state court proceeding.<sup>\*/</sup> What Chase contends, therefore, is that the Secretary should be required to enter the state court proceedings. The authorities cited do not support the imposition of such a requirement. In Juidice v. Vail, 97 S. Ct. 1211 (1977), the

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<sup>\*/</sup> The intended import of the representation that "It is clear that the Secretary is a party to the state court proceeding, because he claims an interest in the pension fund under his authority to enforce ERISA" (Br. at 17) is wholly unclear. The Secretary is not a party to the State court proceeding and cannot accurately be characterized as claiming an interest in the pension fund.



federal plaintiffs had been defendants in the related state court proceedings. They commenced the federal suit after having defaulted in state court and after having been incarcerated pursuant to the state's contempt procedures. They had been under a legal obligation to appear in state court; indeed, it was their failure or refusal to heed that obligation that resulted in the contempt proceedings. Similarly, in Ahrensfield v. Stephens, 528 F. 2d 193 (7th Cir. 1975), the federal plaintiffs had had eminent domain proceedings instituted against them in state court.

In Trainor v. Hernandez, \_\_\_\_ U.S. \_\_\_\_, 45 LW 4535 (May 31, 1977), Illinois state authorities filed a lawsuit against defendants, alleging fraud in obtaining public assistance. Simultaneously, the state officials, acting under state law, attached money belonging to the defendants. The defendants, instead of answering the attachment or the underlying complaint, commenced a federal lawsuit seeking return of the attached money and alleging that the Illinois Act authorizing the attachment was unconstitutional. A three-judge court declined to dismiss the case under the comity doctrine of Younger v. Harris, 401 U.S. 37 (1971), and Huffman v. Pursue, Ltd., 420 U.S. 592 (1975), and proceeded to hold the Illinois law unconstitutional. The Supreme



Court reversed, holding that Younger and Huffman should have been followed, and in so doing, articulated the circumstances in which a federal court properly considers principles of comity:

"... we have frequently inquired into the proper role of a federal court, in a case pending before it and otherwise within its jurisdiction, when litigation between the same parties and raising the same issues is or apparently soon will be pending in a state court. More precisely, when a suit is filed in a federal court challenging the constitutionality of a state law under the Federal Constitution and seeking to have state officers enjoined from enforcing it, should the federal court proceed to judgment when it appears that the State has already instituted proceedings in the state court to enforce the challenged statute against the federal plaintiff and the latter could tender and have his federal claims decided in the state court?" 45 LW at 4536 (Emphasis added).

In finding Younger principles controlling, the Court emphasized that "An action against appellees [the state defendants - federal plaintiffs] was pending in state court when they filed their federal suit." 45 LW at 4537. Where, as here, the federal plaintiff is not before the state court, there is little to be drawn from those considerations of comity which direct abstention in appropriate cases.

The Younger line of cases leads to a different result here for another reason. These cases have been decided largely on the basis of a weighing process in which the Supreme Court has determined, case by case, the weight or importance of the state's interest asserted in the state court proceeding. In Younger, abstention was held proper



because a state criminal proceeding, a proceeding involving "paramount" state interest, was in progress; in Huffman, the state proceeding was "quasi-criminal", and weight was given to the fact that the State was a party; in Juidice, the Court determined that the State's interest in its contempt procedures was "perhaps ... not quite as important as is the state's interest in the enforcement of its criminal laws ... or even its interest in the maintenance of a quasi-criminal proceeding ..., " 97 S. Ct. at 1217, but important enough to require abstention.

In Trainor, a similar weighing was performed by the Court, see 45 LW at 4537, and the substantiality of the state's interest is stressed in the concurring opinion of Mr. Justice Blackmun, Id. at 4538. The state interest in the subject matter of the state proceeding here -- adjudicating in a suit between private parties the lawfulness of the conduct of a fiduciary of an employee pension benefit plan -- is reduced to zero by ERISA sections 502(e)(1) and 514, 29 U.S.C. 1132(e)(1) and 1144; and the weight of its interest in having its own courts determine their jurisdiction can only be assessed as slight in view of the provisions of ERISA section 502(e)(1), 29 U.S.C. 1132 (e)(1), which, with exceptions not here pertinent, confide all judicial application of the provisions of Title I of ERISA to the federal



courts.<sup>\*/</sup> Thus neither reason, precedent, nor the methodology of the precedential cases suggests a proper basis for the district court to have abstained here.

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\*/ As the conference committee said of the bill which became ERISA,

"Under the conference agreement, civil actions may be brought by a participant or beneficiary to recover benefits due under the plan, to clarify rights to receive future benefits under the plan, and for relief from breach of fiduciary responsibility. The U.S. district courts are to have exclusive jurisdiction with respect to actions involving breach of fiduciary responsibility as well as exclusive jurisdiction over other actions to enforce or clarify benefit rights provided under title I. However, with respect to suits to enforce benefit rights under the plan or to recover benefits under the plan which do not involve application of the title I provisions, they may be brought not only in the U.S. district courts but also in State courts of competent jurisdiction." H.R. Rep. No. 1280, 93d Cong., 2d Sess. 327 (1974). (Emphasis added).



4. CONCLUSION

For the foregoing reasons, and because the Secretary of Labor is entitled to a federal forum for litigation of his claim under Title I of ERISA, the decision of the district court dismissing the Secretary's complaint without adjudication of the merits should be reversed.

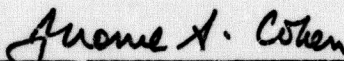
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**JUN 17 1977**

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